

Message Text

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12

ACTION L-03

INFO OCT-01 EA-11 ISO-00 CIAE-00 DODE-00 NSAE-00 NSCE-00

SSO-00 USIE-00 INRE-00 PM-07 H-03 INR-10 NSC-07 PA-04

RSC-01 PRS-01 SPC-03 SS-20 ACDA-19 OIC-04 SR-02 ORM-03

DPW-01 AF-10 ARA-16 EUR-25 NEA-10 DRC-01 /162 W

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O 290832Z MAR 74

FM AMEMBASSY CANBERRA

TO USMISSION GENEVA IMMEDIATE

INFO SECSTATE WASHDC IMMEDIATE 2891

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E.O. 11652: N/A

TAGS: ICRC, PARM

SUBJ: GENEVA CONFERENCE ON LAW OF WAR - NATIONAL LIBERATION WARS

REF: A) GENEVA 1978 B) GENEVA 1921 C) CANBERRA 1526

1. EMBOFF ABLE TO SEE GILCHRIST AFTERNOON MAR 29 TO FOLLOW UP AS INSTRUCTED PARA 8, REF B. BY THAT TIME WE HAD ALSO RECEIVED REF A. GILCHRIST INVITED G. COLES, DFA STAFF LAWYER, TO BE PRESENT DURING DISCUSSION.

2. IN RATHER UNSTRUCTURED DISCUSSION OF RATIONALE FOR GOA CHANGING ITS VOTE FROM ABSTENTION IN COMMITTEE TO PROPOSED AFFIRMATIVE VOTE IN PLENARY SESSION ON ARTICLE 1 AS ADOPTED BY COMMITTEE 1, GILCHRIST NOTED HE WAS IN AN "EMBARRASSING" SITUATION. HE SAID HE WAS UNABLE AT THE TIME TO STATE WHETHER AUSTRALIA WOULD OR WOULD NOT VOTE IN FAVOR OF ARTICLE 1, SINCE HE WAS UNSURE WHAT TEXT PARAGRAPH 2 WOULD EVENTUALLY HAVE BEFORE BEING BROUGHT TO A VOTE. HE STATED THAT THE SITUATION AS FAR AS CANBERRA IS ABLE TO DETERMINE IS STILL IN STATE OF FLUX WITH CHANGES TO PARAGRAPH 2 TEXT STILL POSSIBLE DURING MEETINGS ON MAR 29, GENEVA TIME. HE MENTIONED SPECIFICALLY IN THIS REGARD POSSIBLE

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CHANGES PROPOSED BY INDIAN DELEGATION THE SUBSTANCE OF WHICH DFA

WAS UNSURE ABOUT AT THIS TIME. GILCHRIST SAID, HOWEVER, THAT GENERAL INSTRUCTIONS HAD GONE TO THE AUSTRALIAN DELEGATION TO VOTE IN FAVOR OF ARTICLE 1, IF IT IS UNCHANGED FROM VERSION ADOPTED BY COMMITTEE 1, AND IF THE ALTERNATIVE APPEARS TO BE EITHER TO VOTE IN FAVOR OR AGAINST THIS VERSION. WHEN ASKED IF AUSTRALIAN DELEGATION WOULD BE EXPECTED TO MAKE STATEMENT IN PLENARY EXPLAINING GOA SUPPORT FOR ARTICLE 1, (REF A), GILCHRIST SAID NO SUCH INSTRUCTIONS HAD BEEN SENT AND HE SURMISED THIS WAS DECISION MADE BY AUSTRALIAN DELEGATION.

3. IN SUPPORTING GILCHRIST'S PRESENTATION , COLES REFERRED TO RECENT CONVERSATION OF AUSTRALIAN EMBASSY REPS WITH STATE DEPARTMENT DEPUTY LEGAL ADVISOR FOR FAR EASTERN AFFAIRS IN WASHINGTON AND POSSIBILITY THAT VOTE ON ARTICLE 1 MIGHT BE POSTPONED UNTIL NEXT SESSION OF CONFERENCE OR AT LEAST UNTIL POSSIBLE INTER-SESSIONAL MEETING MIGHT BE HELD. GOA'S UNDERSTANDING HOWEVER WAS THAT POSTPONEMENT OF THE VOTE WOULD OCCUR ONLY IF TI WAS AGREED THAT TEXT OF ARTICLE 1 IS ACCEPTED AS IT NOW STANDS, AND WOULD, IN EFFECT, BE PUT ONLY TO PRO FORMA AFFIRMATIVE VOTE OF THE PLENARY AT SOME LATER TIME. COLES STATED AUSTRALIAN AND U.S. POSITIONS ON PARAGRAPH 2 WERE REALLY QUITE CLOSE AND THAT AUSTRALIAN ACCEPTANCE OF TEXT IS IN THEIR MIND ONLY POSSIBLE BECAUSE AUSTRALIA WILL BE ABLE TO ENTER INTERPRETATIONS OF THIS ARTICLE AT SOME LATER TIME. HE SAID DIFFERENCES BETWEEN TWO POSITIONS APPEAR TO BE THAT U.S. SIDE BELIEVES TEXT WOULD BE "UNACCEPTABLE" WITHOUT SUCH RESERVATIONS ADDED AT THIS TIME. AUSTRALIAN VIEW, HE SAID, WAS THAT PARAGRAPH 2 IN PRESENT FORM WAS "NOT ENTIRELY SATISFACTORY" BUT COULD BE INTERPRETED LATER.

4. COLES NOTED THAT AUSTRALIAN DELEGATION HAS BEEN PARTICULARLY ACTIVE IN TRYING TO HAVE VOTE ON ARTICLE 1 POSTPONED TO LATER TIME. WE GATHER THAT GOA STILL HOPES THAT MATTER CAN BE POSTPONED WITHOUT ACCEPTING CONDITION IMPOSED BY AFRO-ASIAN GROUP THAT ARTICLE 1 BE ACCEPTED IN ITS PRESENT FORM WHEN IT IS BROUGHT UP FOR VOTE LATER ON. COLES NOTED THAT AUSTRALIAN DELEGATION FELT "BOXED IN" BY LACK OF ANY ALTERNATIVE TO VOTING EITHER FOR OR AGAINST CURRENT DRAFT OF ARTICLE 1. HE SAID WESTERN DELEGATIONS HAD TAKEN FIRM STAND AGAINST ARTICLE 1 WITHOUT ATTEMPTING TO BRING UP A COUNTER-DRAFT. IN THIS SITUATION AND SINCE AUSTRALIA WISHED TO PURSUE A "MIDDLE COURSE" THEY WERE FACED WITH HAVING LIMITED OFFICIAL USE

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TO VOTE FOR TEXT OF ARTICLE 1 AS APPROVED BY AFRO-ASIAN DELEGATIONS.

5. GILCHRIST STATED AS RESULT OF EMBASSY CANBERRA DEMARCH MAR 14, HE HAD BEEN REQUESTED BY SECRETARY OF DFA RENOUF TO MAKE PRESENTATION AT WEEKLY SECRETARY'S STAFF MEETING. GILCHRIST SAID DURING COURSE OF SHORT PRESENTATION HE STATED USG HAD PROBLEM WITH TEXT OF ARTICLE 1 AND THAT WE WERE PARTICULARLY CONCERNED THAT SITUATION WHERE LAW OF WAR DID NOT APPLY TO AMERICAN FLYERS

DOWNED IN NORTH VIETNAM SHOULD NOT OCCUR AGAIN. IN SUM, HIS PRESENTATION TO STAFF MEETING PRESENTED USG DOUBTS ABOUT EFFICACY OF TEXT IN ITS THEN CURRENT FORM. GILCHRIST INDICATED GOA REPS UNDERSTOOD AND APPRECIATED USG CONCERNS ABOUT INTRODUCTION OF "JUST WAR" IN CONTEXT OF WARS OF NATIONAL LIBERATION.

6. EMBASSY IN UNCERTAIN WHETHER CONVERSATION REFERRED TO ABOVE WILL HAVE AN IMPACT UPON AUSTRALIAN POSITION IN WHAT APPEARS TO BE RAPIDLY MOVING SITUATION IN GENEVA. WE APPARENTLY DID MAKE THIS APPROACH WHILE DFA REPS ARE STILL SEIZED WITH POSSIBLE CHANGES IN TEXT OF PARAGRAPH 2. IT WOULD APPEAR, HOWEVER, THAT IF TEXT REMAINS UNCHANGED AND AUSTRALIAN DELEGATION IS FACED WITH HAVING TO VOTE FOR OR AGAINST IT, THEY WILL RELY UPON GENERAL INSTRUCTIONS ALREADY PASSED TO THEM TO VOTE IN THE AFFIRMATIVE. GOA REPS OBVIOUSLY AWARE OF LEGAL DRAWBACKS WHICH THIS VOTE MIGHT ENTAIL FOR THEM IN THE FUTURE, SHOULD THEY AT THAT TIME WISH TO ENTER INTERPRETATIONS OR RESERVATIONS ON PARAGRAPH 2. THEY CONTINUE TO HOPE THAT AMELIORATING LANGUAGE OR POSTPONEMENT WITHOUT PRIOR COMMITMENT TO LANGUAGE OF PARAGRAPH 2 CAN BE ACHIEVED AT CURRENT SESSION. EMBASSY APPROACH APPEARS TO HAVE SUSTAINED DOUBTS ALREADY PRESENT IN MINDS OF GOA REPS ABOUT WISDOM IN VOTING IN FAVOR OF PARAGRAPH 2.
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